

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
HOWARD MANUFACTURING COMPANY,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 77-49

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for industrial burning allegedly in violation of respondent's Regulation I, came on for hearing before the Pollution Control Hearings Board, Chris Smith and Dave J. Mooney, convened at Seattle, Washington on August 5, 1977. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant, Howard Manufacturing Company, appeared through its president, Charles I. Howard. Respondent appeared by and through its attorney, Keith D. McGoffin. Olympia court reporter, Gene Barker,

1 recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were examined.
3 From testimony heard and exhibits examined, the Pollution Control
4 Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
8 a certified copy of its Regulation I containing respondent's regulations
9 and amendments thereto.

10 II

11 The appellant Howard Manufacturing Company is in the business
12 of manufacturing wooden ladders. It is appellant's practice to use
13 the waste wood generated in the manufacture of the ladders as fuel
14 for its furnace which in turn provides heat for its manufacturing
15 plant and also heat to dry the wood from which ladders are made. This
16 commendable practice both destroys waste and serves a further productive
17 purpose. Appellant's furnace is not multi-chambered nor has it been
18 approved as an incinerator by respondent.

19 On March 4, 1976 the respondent conducted a test of appellant's
20 wood burning to assure that particulate emissions therefrom were within
21 the standard limiting the grains per cubic foot of exhaust gas.

22 III

23 After the wooden ladders are assembled, and the waste wood put
24 aside as boiler fuel, the ladders are treated with a protective resin.
25 Cardboard is placed on the floor of the work area where the resin is
26 applied so as to catch excess resin which may drip to the floor.

27 FINAL FINDINGS OF FACT,
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1 On March 22, 1977 the appellant added to the waste wood fire in
2 its furnace a substantial quantity of this resin soaked cardboard. The
3 appellant intended merely to dispose of the cardboard, and not to
4 rely on it as a source of heat or for any other productive purpose.
5 The resultant emission had a duration of at least eight minutes at an
6 opacity equal to No. 5 on the Ringelmann Chart.

7 IV

8 The emission was observed by the appellant who had earlier burned
9 a small sample of the resin soaked cardboard without producing a visible
10 emission. The appellant attempted, unsuccessfully, to bring the visible
11 emission to an immediate halt.

12 The emission was also observed by an inspector of the respondent
13 who recorded his observation in writing, brought his observation to the
14 attention of appellant and inquired of the emission's cause, all on the
15 date of the emission, March 22, 1977. A formal Notice of Violation and
16 Notice and Order of Civil Penalty were subsequently served upon
17 the appellant.

18 V

19 The appellant has received eight prior Notices of Violation from
20 the respondent because of visible emissions. Five of these have
21 been accompanied by a civil penalty assessment of \$50. None of these
22 prior violations was appealed to this Hearings Board, and all civil
23 penalties were paid in the amount assessed. These prior violations
24 did not result from the burning of resin soaked cardboard, and the
25 most recent of these prior violations was July 1974.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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VI

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

The appellant is said to have violated both Section 9.03(b) and Section 9.05 of respondent's Regulation I of which we now take official notice. The first of these, Section 9.03(b), states as follows:

. . . After July 1, 1975, it shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than three (3) minutes in any one hour, which is:

(1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1); provided that, 9.03(b)(2) shall not apply to fuel burning equipment utilizing wood residue when the particulate emission from such equipment is not greater than 0.05 grain per standard cubic foot.

. . . .

The second of these, Section 9.05, states as follows:

It shall be unlawful for any person to burn any combustible refuse in any incinerator within the boundaries of the Agency except in a multiple chamber incinerator as defined in Section 1.07 and provided with emission control apparatus, or in equipment found by the Control Officer in advance of such use to be equally effective for the purpose of air pollution control.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

II

The appellant violated Section 9.03(b) of respondent's Regulation I by causing the visible emissions which we have found to be No. 5 Ringelmann for eight minutes duration.

Because appellant used care in first test-burning a small sample of the resin soaked cardboard, and because of appellant's attempt to immediately halt the visible emissions, however, the \$250 civil penalty assessed for this violation shall be partially suspended.

III

The appellant violated Section 9.05 of respondent's Regulation I. The violation does not, however, justify the maximum civil penalty of \$250 which was assessed, and the same shall be both reduced and suspended.

In order to violate Section 9.05 one must first burn in an "incinerator". By Section 1.07(p) we see that an incinerator means "a furnace for the destruction of waste". In burning waste wood, the appellant was not using its furnace as an "incinerator" because the appellant intended and did accomplish the further useful purpose of heating the plant and drying lumber. This accomplished intent withdraws appellant's burning from the operation of Section 9.05 pertaining to incinerators, and this interpretation is supported by respondent's program of testing the wood waste emissions rather than prohibiting them altogether under Section 9.05 dealing with incinerators.

When appellant burned the resin soaked cardboard in the same furnace, he lacked the requisite intent to accomplish a further productive purpose beyond mere destruction of waste. Thus we conclude

FINAL FINDINGS OF FACT,
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1 that a violation of Section 9.05 has occurred, inasmuch as the appellant's
2 intent caused the combustion unit to come within the definition of
3 "incinerator", Section 1.07(p), while it was clearly not an approved
4 type of incinerator, Section 1.07(t).

5 Where as here the same furnace may be either an "incinerator" or
6 not, depending on intent, and where, in one isolated instance, the
7 appellant has used his furnace as an incinerator by burning merely to
8 dispose, the maximum civil penalty is not sustainable.

9 IV

10 Any Finding of Fact which should be deemed a Conclusion of Law
11 is hereby adopted as such.

12 From these Conclusions the Pollution Control Hearings Board
13 makes this

14 ORDER

15 1. The \$250 civil penalty (No. 3251 for violation of Section 9.05) is
16 reduced to \$50 and is suspended on condition that appellant not violate
17 respondent's regulations for a period of one year after this Order
18 becomes final.

19 2. The \$250 civil penalty (No. 3250 for violation of Section 9.03(b))
20 is affirmed, provided however, that \$50 of such civil penalty is
21 suspended on condition that appellant not violate respondent's regulations
22 for a period of one year after this Order becomes final.

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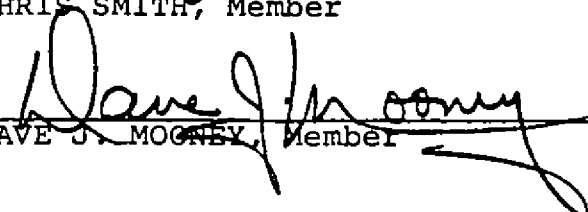
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 DONE at Lacey, Washington this 19th day of September, 1977.

2 POLLUTION CONTROL HEARINGS BOARD

3 
4 CHRIS SMITH, Member

5 
6 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,
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